

Subpart B—Exercising Fiduciary Powers

§ 550.130 How may I conduct multi-state operations?

(a) *Conducting fiduciary activities in more than one State.* You may conduct fiduciary activities in any State, subject to the application and notice requirements in subpart A of this part.

(b) *Serving customers in more than one State.* When you conduct fiduciary activities in a State:

(1) You may market your fiduciary services to, and act as a fiduciary for, customers located in any State, may act as a fiduciary for relationships that include property located in other States, and may act as a testamentary trustee for a testator located in other States.

(2) You may establish or utilize an office in any State to perform activities that are ancillary to your fiduciary business.

[67 FR 76299, Dec. 12, 2002]

§ 550.135 How do I determine which State's laws apply to my operations?

(a) The State laws that apply to you by virtue of 12 U.S.C. 1464(n) are the laws of the States in which you conduct fiduciary activities. For each individual State, you may conduct fiduciary activities in the capacity of trustee, executor, administrator, guardian, or in any other fiduciary capacity the State permits for its State banks, trust companies, or other corporations that compete with Federal savings associations in the State.

(b) For each fiduciary relationship, the State referred to in 12 U.S.C. 1464(n) is the State in which you conduct fiduciary activities for that relationship.

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§ 550.136 To what extent do State laws apply to my fiduciary operations?

(a) *Occupation of field.* To enhance safety and soundness and to enable Federal savings associations to conduct their fiduciary activities in accordance with the best practices of thrift institutions in the United States (by efficiently delivering fiduciary

services to the public free from undue regulatory duplication and burden), OTS occupies the field of the regulation of the fiduciary activities of Federal savings associations. In so doing, OTS intends to give Federal savings associations maximum flexibility to exercise their fiduciary powers in accordance with a uniform scheme of Federal regulation. Accordingly, Federal savings associations may exercise fiduciary powers as authorized under Federal law, including this part, without regard to State laws that purport to regulate or otherwise affect their fiduciary activities, except to the extent provided in 12 U.S.C. 1464(n) (State laws regarding scope of fiduciary powers, access to examination reports regarding trust activities, deposits of securities, oaths and affidavits, and capital) or in paragraph (c) of this section. For purposes of this section, "State law" includes any State statute, regulation, ruling, order, or judicial decision.

(b) *Illustrative examples.* Examples of State laws that are preempted by the HOLA and this section include those regarding:

(1) Registration and licensing;

(2) Recordkeeping;

(3) Advertising and marketing;

(4) The ability of a federal savings association conducting fiduciary activities to maintain an action or proceeding in State court; and

(5) Fiduciary-related fees.

(c) *State laws that are not preempted.* State laws of the following types are not preempted to the extent that they only incidentally affect the fiduciary operations of Federal savings associations or are otherwise consistent with the purposes of paragraph (a) of this section:

(1) Contract and commercial law;

(2) Real property law;

(3) Tort law;

(4) Criminal law;

(5) Probate law; and

(6) Any other law that OTS, upon review, finds:

(i) Furthers a vital State interest; and

(ii) Either has only an incidental effect on fiduciary operations or is not